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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,528	07/02/2003	Gideon Yonat	0-03-148	5276
7590	10/26/2004		EXAMINER	
Kevin D. McCarthy Roach Brown McCarthy & Gruber, P.C. 1620 Liberty Building 420 Main Street Buffalo, NY 14202			MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 10/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/612,528	YONAT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tara L. Mayo	3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 16 August 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-15 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

2. The prior rejections under 35 USC §112, second paragraph set forth in the last Office action have been overcome by the response filed 16 August 2004.
3. Claims 1 through 12, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. The term "improved" in claims 1, 14 and 15 is a relative term which renders the claim indefinite. The term "improved" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 4, 6, 8 and 12 through 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Presby (U.S. Patent No. 6,461,078 B1).

Presby '078, as seen in Figure 5, shows a drip pipeline comparing: with regard to claim 1,

a pipe (15) having bores created therein for dispensing water to soil, and a layer (12) pervious to water applied to said pipe to screen said bores;

with regard to claim 2,

wherein the pervious layer is a fabric sleeve;

with regard to claim 4,

wherein the pervious layer screens at least the surface of the segments of the pipe containing a bore;

with regard to claim 6,

wherein the fabric is textured polypropylene (col. 11, lines 50 through 55);

with regard to claim 8,

wherein the fabric consists of rectangular pieces having their long edges juxtaposed and joined; and

with regard to claim 12,

wherein the sleeve has inner diameter larger than the outer diameter of the pipe.

With regard to claim 4, the method of forming the at least one bore of the device is not germane to the issue of patentability of the device itself. Therefore the claimed limitation of drilling has not been given patentable weight.

With regard to claims 13 through 15, the method steps recited therein are inherent to the method of assembling the device shown by Presby '078.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 3, 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Presby (U.S. Patent No. 6,461,078 B1) in view of Houston et al. (U.S. Patent No. 6,776,194 B2).

Presby '078 discloses all of the features of the claimed invention with the exception(s) of:  
with regard to claim 3,

the pervious layer being a metal spiral sleeve;

with regard to claim 5,

the sleeve being made of a metal wire resistant to the environment, wound in spiral form;

with regard to claim 9,

the sleeve having a permeability to water of at least 80 wt %; and

with regard to claim 10,

the sleeve consisting of a stainless steel wire having a diameter from 1.0 mm to 1.5 mm.

Houston et al. '194, as seen in Figures 7A and 7B, disclose a water pervious layer adapted to be fitted over a conduit, the layer comprising a metal spiral sleeve (400) comprising coated stainless steel wires (13a-c; col. 2, lines 38 through 46) for effect more accurate distribution patterns of fluid exiting a conduit (col. 6, lines 49 through 61).

With regard to claims 3, 5 and 10, it would have been obvious to one having ordinary skill in the art of fluid handling at the time the invention was made to modify the device shown by Presby '078 such that it would include coated stainless steel wires spirally oriented in a layer surrounding the conduit as taught by Houston et al. '194 to improve fluid distribution.

With regard to claim 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the permeability of the sleeve shown by the combination of Presby '078 and Houston et al. '194 equal to 80 wt.%, since it has been held that

where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make diameter of the wire shown by the combination of Presby '078 and Houston et al. '194 from 1.0mm to 1.5 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

10. Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Presby (U.S. Patent No. 6,461,078 B1).

Presby '078 discloses all of the features of the claimed invention with the exception(s) of: with regard to claim 7,

the fabric having a permeability to water of at least 0.80; and

with regard to claim 11,

the pipes of the pipeline having sections of length up to 500 meters, inner diameters from 4 cm to 25 cm, wall thicknesses from 100 microns to 1200 microns, and bores drilled therein in the number of from 10 to 10 per meter of length.

With regard to claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the permeability of the sleeve shown by Presby '078 equal to 0.80, since it has been held that where the general conditions of a claim are disclosed in

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the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

*In re Aller*, 105 USPQ 233.

With regard to claim 11, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pipe of the device shown by Presby '078 500 meters in length with an inner diameter from 4 cm to 25 cm and a wall thickness from 100 microns to 1200 micron and having bores formed therein in the number of from 10 to 10 per meter of length, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

*In re Aller*, 105 USPQ 233.

With further regard to claim 11, the method of forming the at least one bore of the device is not germane to the issue of patentability of the device itself. Therefore the claimed limitation of drilling has not been given patentable weight.

#### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1 through 15 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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05 October 2004